

Response to Comments in
United States v. Village Voice Media

Exhibit A

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
Eastern Division**

UNITED STATES OF AMERICA,

Plaintiff,

v.

VILLAGE VOICE MEDIA, LLC,

and

NT MEDIA, LLC,

Defendants.

Civil Action No. 1:03CV0164

Before: Judge Polster

**PUBLIC COMMENTS OF
CITIZENS FOR VOLUNTARY TRADE**

Preliminary Statement

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)-(h) (Tunney Act), and the notice filed by the United States in the February 12, 2003, edition of the *Federal Register*, Citizens for Voluntary Trade (CVT) respectfully submits the enclosed public comments in response to the proposed Final Judgment in the above-captioned case.

CVT is a national nonprofit association based in Washington, DC. CVT is organized to promote the public welfare by examining the enforcement of antitrust laws against private businesses and individuals. CVT's standing policy is to file comments in all Tunney Act proceedings brought by the United States under the antitrust laws.¹

CVT has no financial interest in the outcome of this case, nor do we have any financial interest in any competitor of Village Voice Media or NT Media. These comments reflect the view of the Board of Directors of Citizens for Voluntary Trade and the individuals named below.

¹ S.M. Oliva, the president of Citizens for Voluntary Trade, separately filed a brief *amicus curiae* with the district court on March 26, 2003, objecting to the execution of the proposed Final Judgment prior to a public interest determination by the court. The brief was accepted by the Court on April 3.

Comments

The proposed Final Judgment requires each defendant to divest newspaper assets to third parties approved by the United States. These third parties will then resume publication of newspapers previously closed by the defendants as part of what the government deemed a *per se* illegal market allocation agreement. The new publications will then take the place of newspapers closed as a result of the defendants' conduct, restoring competition to the marketplace.

Regardless of the alleged merits, the proposed Final Judgment is preempted by the First Amendment, which categorically prevents the United States from interfering with the free operation of the press.² Forcing a newspaper publisher to divest assets because it chooses to cease publication falls within the sphere of government conduct prohibited by the First Amendment. It is a form of compelled speech, no different in constitutional substance from censoring a newspaper for publishing unpopular opinions. Neither the facts alleged in the complaint nor the text of the antitrust laws can justify such a basic violation of the First Amendment. Even the most "anti-competitive" conduct is protected by the First Amendment.

For these reasons, the Court should reject entry of the proposed Final Judgment as inconsistent with the public interest, and dismiss the complaint with prejudice.

Respectfully Submitted,
CITIZENS FOR VOLUNTARY TRADE



S.M. OLIVA
President
THOMAS CIAVARELLA
DARYL COBRANCHI, PH.D.
ARTHUR SILBER

2000 F Street, N.W., Suite 315
Washington, DC 20006
Telephone: (202) 223-0071
Facsimile: (760) 418-9010
E-mail: info@voluntarytrade.org

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² The First Amendment reads, in relevant part: "Congress shall make no law ... abridging the freedom of speech, or of the press."